



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mallory Electric Company

File: B-244699

Date: October 29, 1991

David A. Hearne, Esq., Outland, Gray, O'Keefe & Hubbard, for the protester.

John Wittman, Esq., and Paul Fisher, Esq., Department of the Navy, for the agency.

Katherine I. Riback, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where a bid contains a discrepancy between the arithmetic total of bid items and total submitted for those items, so that the intended bid amount could be either of two figures and under one of the two possible interpretations a lower bid would be displaced, it is improper to treat the mistake as an apparent clerical error.

2. Where invitation for bids contains two bid items and two additive items and at the time of bid opening sufficient funds are available for award of the bid items and the additive items, low bid must be determined on the basis of the total bid price, including the additive items.

DECISION

Mallory Electric Company protests the proposed award of a contract to Hitt Electric Corporation under invitation for bids (IFB) No. N62470-85-B-5259, issued by the Department of the Navy, for piers electrical distribution improvements at the Naval Station, Norfolk, Virginia. Mallory contends that the contracting officer improperly determined that a mistake in Hitt's bid was correctable as an apparent clerical error.

We deny the protest.

The solicitation, as amended, contained the following bid schedule:

| | | | | |
|-----------------------------|------|------------|-----------|-----------|
| Bid Item (a) | | | | \$ _____ |
| Bid Item (b) | | | | |
| ITEM | UNIT | UNIT PRICE | NO. UNITS | EXTENSION |
| Piling | LF | \$ _____ | 2026 | \$ _____ |
| TOTAL BID ITEMS (a) and (b) | | | | \$ _____ |
| Additive Item No. 1 | | | | \$ _____ |
| Additive Item No. 2 | | | | \$ _____ |

Bid item (a) represented all the work with the exception of the foundation piling and that represented by the two additive items. Bid item (b) was for the foundation piling, while additive item No. 1 was for a single portable unit substation and additive item No. 2 was for an additional portable unit substation. The IFB provided at paragraph (b) of section 1.3.3.4 that the "award will be made on the total sum of Bid Items (a) and (b)." On the other hand, paragraph (c) of that same section stated that the funds available for the project will be recorded at bid opening and referred to the "Additive or Deductive Items" clause contained elsewhere in the solicitation, which provided that the low bidder is the one "offering the low aggregate amount for the first or base bid item plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened."

On June 27, 1991, the agency opened eight bids. The bids for the total of bid items (a) and (b) and additive items 1 and 2 ranged from \$7,491,550 to \$9,762,502. At that time, the agency announced that the available funding was \$9,784,000. The contracting officer also discovered that Hitt's bid contained a discrepancy between the total submitted for bid items (a) and (b) and the arithmetic total of those figures. The contracting officer concluded that Hitt had made a clerical error in totaling bid items (a) and (b), and pursuant to Federal Acquisition Regulation (FAR) § 14.406-2, the contracting officer substituted what he believed was the correct total for bid items (a) and (b). The correction was made by the contracting officer without considering the impact of the additive items. Hitt's actual and corrected bids are as follows:

| | <u>ACTUAL BID</u> | <u>CORRECTED BID</u> |
|-----------------------------|-------------------|----------------------|
| Bid Item (a) | \$6,694,900 | \$6,694,900 |
| Bid Item (b) | \$ 50,650 | \$ 50,650 |
| Total Bid Items (a) and (b) | \$6,887,550 | \$6,745,550 |
| Additive Item No. 1 | \$ 302,000 | \$ 302,000 |
| Additive Item No. 2 | \$ 302,000 | \$ 302,000 |
| | \$7,491,550 | \$7,349,500 |

Hitt confirmed its bid item prices by letter of July 1, and indicated that it had made an error in totaling bid items (a) and (b) and that the total for those bid items should have been \$6,745,550.

Mallory argues that Hitt's bid should not have been corrected, as the alleged error was not apparent from the face of its bid. The protester points out that Hitt's bid prices for both bid items (a) and (b) are in line with the prices of the other bidders, as is its total price for the bid items. Thus, according to the protester, Hitt's bid is reasonably susceptible of two different interpretations, i.e., that the prices for bid items (a) and (b) are correct but the total is incorrect, or the total is correct but one or both of the bid item prices are incorrect. Since Mallory's total price for items (a) and (b), \$6,800,650, is lower than Hitt's uncorrected price for those items but higher than Hitt's corrected price for those items, the protester argues that Hitt's bid should be rejected as ambiguous. The protester's position is based upon the premise that the low bid must be determined by the sum of bid items (a) and (b).

For the reasons set forth below, we agree with Mallory that the agency did not use the proper rationale for correcting Hitt's bid. Nevertheless, since in our view the low bid must be determined based upon the low bid for all of the work, including the additive items, and since Hitt's total bid, including the additive items, remains low whether or not the total for bid items (a) and (b) is corrected, the bid was properly accepted.

The regulations provide that apparent clerical mistakes, such as the obvious misplacement of a decimal point, obviously incorrectly stated discounts or obvious mistakes in the designation of a unit, may be corrected by the contracting officer before award. FAR § 14.406-2. Additionally, the regulations provide for correction of other mistakes disclosed before award; however, if correction would result in displacing one or more lower bids, correction may not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. FAR § 14.406-3.

These regulations permit correction where a discrepancy admits to only one reasonable interpretation that is ascertainable from the face of the bid in light of the government estimate, the range of other bids, or the contracting officer's logic and experience. Hudgins Constr. Co., Inc., B-213307, Nov. 15, 1983, 83-2 CPD ¶ 570. On the other hand, where a bid is reasonably susceptible of being interpreted as offering either one of two prices shown on its face, only one of which is low, the bid must be rejected. Virginia Beach Air Conditioning Corp., 69 Comp. Gen. 178 (1990), 90-1 CPD ¶ 78; Roy McGinnis & Co., Inc., B-239710, Sept. 24, 1990, 90-2 CPD ¶ 251.

The contracting officer made his determination based solely on the price bid for the base bid items. Under those circumstances, we do not believe that the contracting officer's determination was proper. We agree with the protester that the discrepancy on the face of Hitt's bid reasonably could be attributable to either of two causes (1) the prices for bid items (a) and (b) are correct but the total of the bid items is incorrect, or (2) the total is correct but one or both of the prices of the bid items are incorrect. The contracting officer determined that the error was in the total for bid items (a) and (b). However, Hitt's allegedly incorrect total for bid items (a) and (b) of \$6,887,550, is within the range of the total price for bid items (a) and (b) of bids that were submitted, which ran from \$6,800,650 to \$8,928,502. Hitt's bid for items (a) and (b) is not so grossly out of line with the others as to suggest an apparent error. Similarly, we find no significant disparity between Hitt's price for bid item (a) or its price for bid item (b) and the other bidders' prices. Thus, Hitt's bid reasonably may be interpreted as intending either the true mathematical sum of bid items (a) and (b) or the total figure submitted by Hitt with a correction of one or both of the bid item prices. Since it is not possible to determine the intended bid without benefit of advice from the bidder, it was improper to treat the price disparity as an apparent clerical error. Porterhouse Cleaning and Maintenance Serv. Co., Inc., B-225725, May 13, 1987, 87-1 CPD ¶ 522.


Even though the contracting officer's determination that Hitt's bid contained an apparent clerical error was improper when considered in the context of an award scheme based solely on items (a) and (b), under this IFB the low bid must be determined based upon all of the bid items, including the additive items.

According to paragraph (c) of section 1.3.3.4 and the "Additive or Deductive Items" clause included in the solicitation, the low bidder is "the conforming responsible bidder offering the low aggregate amount for the first or base bid item plus or minus (in the order of priority listed in the

schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened." Because the available funding was \$9,784,000, sufficient funds were available to award additive items 1 and 2. Therefore, in determining the low bidder, the agency was required to consider bid items (a) and (b) along with additive items 1 and 2.¹ NJS Dev. Corp., 67 Comp. Gen. 529 (1988), 88-2 CPD ¶ 62. Under these circumstances, Hitt's was the lowest bid submitted, with or without correction. Therefore, the bid was properly accepted. See Central Mechanical Constr., Inc., B-220594, Dec. 31, 1985, 85-2 CPD ¶ 730.

As for the correction, since it did not displace any other bidder and resulted in a lower price to the government, we have no legal basis upon which to object to it. See Atlantic-Corey Crane Serv., Inc., B-224253, Dec. 4, 1986, 86-2 CPD ¶ 644.

The protest is denied.


for James F. Hinchman
General Counsel

¹The protester argues, without mentioning paragraph (c) or the solicitation's Additive or Deductive Items clause, that the low bidder must be determined, in accordance with paragraph (b), on the basis of the base bid items. While the clause at 1.3.3.4 was not clear in establishing the relationship of the base and additive items, it was clear that the additive items would be considered if sufficient funds were available.